

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI 'G' BENCH, MUMBAI.

Before Shri B.R. Baskaran (AM) & Shri Pavan Kumar Gadale (JM)

I.T.A. No. 3118/Mum/2022 (A.Y. 2011-12)

ACIT, Circle-3 Ashar IT Park 6 th Floor B-Wing, Room No. 02 Wagle Industrial Estate Thane(W)-400 604.	Vs.	M/s. Shree Rubber Works 601/B2, Harsiddh Park Off GA Marg Pawar Nagar, Thane-W Pincode-400 610 PAN : AAMFS2747Q
(Appellant)		(Respondent)

Assessee by	Shri Rajesh Shah
Department by	Ms. Neerja Sharma
Date of Hearing	07.02.2023
Date of Pronouncement	14.02.2023

O R D E R

Per B.R.Baskaran (AM) :-

The Revenue has filed this appeal challenging the order dated 22.9.2022 passed by learned CIT(A), National Faceless Appeal Centre, Delhi confirming the penalty of Rs.19,467/- levied by the Assessing Officer under section 271(1)(c) of the I.T. Act.

2. At the time of hearing, the learned AR raised a legal contention. He submitted that the Assessing Officer has not struck off inapplicable portion, out of the two types of charges mentioned in the notice issued to the assessee for initiating penalty proceedings u/s 271(1)(c) of the Act. The Ld A.R also furnished a copy of the said notice. He submitted that non-striking of inapplicable portion in the notice will vitiate the penalty proceedings as per the decision rendered by Hon'ble Jurisdictional Bombay High Court in the case of Mohd. Farhan A. Shaikh Vs. DCIT (2021) 434 ITR 1. Accordingly, the

learned AR submitted that the order passed by Ld CIT(A) does not call for any interference on the basis of above said legal contention.

3. We have heard learned DR and perused the record. On a perusal of the notice issued by the AO u/s 274 r.w. Section 271(1) (c) of the Act dated 13.03.2015 calling upon the assessee to show cause as to why the penalty should not be imposed u/s 271(1)(c) of the Act, two types of charges are mentioned, viz, "to have concealed the particulars of his income" or "furnished inaccurate particulars of such income". It is well settled proposition that both the charges stated above are distinct and different. Hence, it is required for the AO to show the limb under which the penalty proceeding was initiated. In the instant case, we notice that inapplicable limb has not been struck off in the notice by the AO and hence the specific fault/charge was not conveyed to the assessee. Hence, the show cause notice is rendered vague, resulting in a defective/invalid notice and therefore bad in law. In support of this proposition, we may take support of the decision of the Hon'ble Karnataka High Court rendered in the case of CIT vs Manjunatha Cotton and Ginning Factory reported in (2013) 359 ITR 565 (Kar) and the Department's SLP against it has been dismissed by the Hon'ble Supreme Court. We also find that Hon'ble Karnataka High Court in the case of CIT Vs. SSA's Emerald Meadows, reported in (2016) 73 taxmann.com 241 (Kar) endorsed the same view in Manjunatha Cotton and Ginning Factory (supra) and held as under:-

"3. The Tribunal has allowed the appeal filed by the assessee holding the notice issued by the Assessing Officer under section 274 read with Section 271(1)(c) of the Income Tax Act, 1961 (for short 'the Act'), to be bad in law as it did not specify which limb of Section 271(1)(c) of the Act, the penalty proceedings had been initiated i.e., whether for concealment of particulars of income or furnishing of inaccurate particulars of income. The Tribunal, while allowing the appeal of the assessee, has relied on the decision of the Division Bench of this Court rendered in the case of CIT Vs. Manjunatha Cotton & Ginning Factory (2013) 359 ITR 565/218 Taxman 423/35 taxmann.com 250(Kar). 4. In our view, since the matter is covered by judgment of the Division Bench of this Court, we are of the opinion, no substantial question of law arises in this appeal for determination by this Court. The appeal is accordingly dismissed."

Identical view has been expressed by the full bench of Hon'ble jurisdictional High Court in the case of Mohd Farhan A shaikh (supra).

4. Respectfully following the judicial precedents as well as the binding decision of the Full bench decision of the Hon'ble jurisdiction High Court in the case of Mohd. Farhan A. Shaikh (supra), we uphold the decision of Ld CIT(A) in deleting the penalty levied in this case on the legal ground discussed above.

5. In the result, appeal filed by the Revenue is dismissed.

Pronounced in the open court on 14.2.2023.

Sd/-
(PAVAN KUMAR GADALE)
Judicial Member

Sd/-
(B.R. BASAKARAN)
Accountant Member

Mumbai; Dated : 14/02/2023

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. The CIT(A)
4. CIT
5. DR, ITAT, Mumbai
6. Guard File.

//True Copy//

BY ORDER,

(Assistant Registrar)
ITAT, Mumbai

PS